IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 2ND JANUARY 2007 / 12TH PAUSHA 1928

WP(C).No. 66 of 2007(G)

OS.195/2004 of MUNSIFF COURT,CHENGANNUR

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PETITIONER:

MOHAMMED HUSSAIN,
THARAYIL PALLATHU HOUSE, VADASSERIKKARA,
KURUTTISSERY VILLAGE, ALAPPUZHA DISTRICT.

BY ADV. SRI.J.DEVADANAM
SRI.VINOD J.DEV
SRI.PRAMOD J.DEV

RESPONDENTS:

MARIYATHU BEEVI,
KULANGARA HOUSE, KURITTISSERY,
ALAPPUZHA DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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W.P.(C)No.66 OF 2007

.....

DATED THIS THE 2nd DAY OF JANUARY, 2007

JUDGMENT

Petitioner is second defendant in O.S.195 of 2004 on the file of Munsiff Court, Chengannur. Respondent is the plaintiff. Petitioner, along with the 4th defendant, filed I.A.7 of 2006 under Section 10 of the Code of Civil Procedure to stay the suit till disposal of A.S.89 of 2004 pending before Additional District Court, Mavelikkara. Learned Munsiff under Ext.P1 order allowed that application holding that no objection was filed. Subsequently it was brought to the notice of learned Munsiff that an objection was in fact filed to the application when it was allowed. Therefore under Ext.P2 order the earlier order was reviewed. Learned Munsiff found that A.S.89 of 2004 was filed challenging the decree and judgment in O.S.385 of 1997 which was a suit for fixation of the boundary and O.S.195 of 2004 pending before that court is only a suit for injunction and in such circumstances the suit is not to be stayed under Section 10 of Code of Civil Procedure, till disposal of A.S.89 of 2004. Ext.P2 order is challenged

in this petition filed under Article 227 of Constitution of India.

2. Learned counsel appearing for the petitioner was heard. The arguments of the learned counsel appearing for petitioner was that under Ext.P1 order, an order of stay was granted and without filing an application to review that order learned Munsiff should not have ordered review of Ext.P1 order and on that ground the order is to be quashed. It was argued that when the dispute in A.S.89 of 2004 is for fixation of boundary, learned Munsiff should have stayed O.S.195 of 2004 till disposal of the appeal.

3. On hearing learned counsel appearing for the petitioner, I do not find any reason to interfere with Ext.P2 order. When Ext.P1 order was passed on the sole ground that plaintiff/first respondent did not file an objection, when in fact an objection was filed contending that the suit shall not be stayed till disposal of the appeal pending before the District Court, learned Munsiff was perfectly correct in ordering review of that order as it was a mistake committed by the court itself. Hence Ext.P2 order

cannot be interfered on that ground.

O.S.385 of 1997 is a suit for fixation of boundary. The appeal pending before District Court is against the decree in that suit. O.S.195 of 2004 is only a suit for injunction. The question to be decided in the suit is on the possession of plaint schedule property. In such circumstances, I do not find any illegality or irregularity in Ext.P2 order warranting interference.

This petition is dismissed.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-